

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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May 7, 2001

Honorable David Boergers  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket No. EL01-45-000 and  
ER01-1385-000 - Consolidated Edison  
Company of New York, Inc.

Dear Secretary Boergers:

For filing please find the Response to Reply by the New York State Public Service Commission in the above-entitled proceedings. Should you have any questions, please feel free to contact me at 518-473-7136.

Very truly yours,

Saul A. Rigberg  
Assistant Counsel

Enclosures

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Consolidated Edison Company            ) Docket No. EL01-45-000  
of New York, Inc.                        ) Docket No. ER01-1385-000

**PUBLIC SERVICE COMMISSION OF THE  
STATE OF NEW YORK RESPONSE TO NEW  
YORK INDEPENDENT SYSTEM OPERATOR, INC.**

By Motion dated March 1, 2001, Consolidated Edison Company of New York, Inc. (Con Edison) asked the Commission to revise its Localized Market Power Mitigation Measures.<sup>1</sup> The New York Independent System Operator, Inc. (NYISO) filed two sets of pleadings in response to the motion, the latter response being filed on April 23. Pursuant to Rule 213(a) of the Federal Energy Regulatory Commission's (Commission's) Rules of Practice and Procedure (18 C.F.R. §385.213(a), the Public Service Commission of the State of New York (NYPSC) seeks leave to file this Response to the Reply of the New York Independent System Operator, Inc. (NYISO).

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<sup>1</sup> New York offers this Response to facilitate the Commission's decisionmaking process, explicate issues involved in this proceeding, and provide the Commission with a more complete record on which to base its decision. The Commission has accepted answers in cases where, as here, a response will assist it in understanding the issues and developing a full record. See, e.g., PJM Interconnection, L.L.C., 94 FERC ¶61,295 (2001); California Indep. Sys. Operator Corp., 94 FERC ¶61,265 (2001); New England Power Pool, 94 FERC ¶61,047 (2001). Good cause exists for the Commission to accept this Response.

The NYISO reply to Con Edison's response states that Con Edison has not shown a consistent pattern of market abuse in the New York City markets. The NYPSC respectfully disagrees that the burden falls on Con Edison to establish a consistent pattern of market abuse. New York City itself is a load pocket, portions of the City are load pockets within the load pocket, and there are only a small number of generators in each load pocket. There is no question that current in-city mitigation measures are insufficient to mitigate load pocket market power in New York City. Further, the specific information that can establish market abuse is treated confidentially by the NYISO and, therefore, Con Edison cannot provide that information.

The NYISO contends that because its Market Advisor's report showed that reference prices were generally close to variable costs, the NYISO's existing mitigation measures are adequate (NYISO Reply to Response to Protest, p. 2 (April 23, 2001)). However, the Market Advisors Report only addresses the day-ahead reference prices and therefore has no bearing on the adequacy of the real-time mitigation measures in New York City.

In a market that is workably competitive, it may not be necessary to establish mitigation measures before problems develop. However, the New York City market is not such a market

and as the Commission's order regarding California states, "prices should be mitigated before they are charged, not after."<sup>2</sup>

Furthermore, FERC should not rely on the prices of last summer to conclude that additional mitigation is not warranted for this summer. The temperature in New York City last summer was unusually cool.<sup>3</sup>

**CONCLUSION**

For the reasons stated in Con Edison's request and subsequent pleadings, the Commission should modify the in-City mitigation measures immediately.

Respectfully Submitted,

Lawrence G. Malone  
General Counsel

By: Saul A. Rigberg  
Assistant Counsel  
Public Service Commission  
Of the State of New York  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: May 4, 2001  
Albany, New York

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<sup>2</sup>San Diego Gas and Electric, 95 F.E.R.C. P61, 115 (2001).

<sup>3</sup>In July and August, the daytime temperature in Central Park usually exceeds 90°, yet last summer, the temperature failed to reach 90° for even a single day during these two months.

CERTIFICATE OF SERVICE

I, Naomi Tague, do hereby certify that I will serve on May 7, 2001, the foregoing Response to Reply of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: May 7, 2001  
Albany, New York

Naomi Tague